

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

DAVID SCOTT HARRISON,
Plaintiff,

v.

KAREN HILLIARD, et. al.,
Defendants.

No. C 15-1396 NJV (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis. (Doc. 3.)

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual

1 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
2 requires more than labels and conclusions, and a formulaic recitation of the elements of a
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
5 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
6 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
7 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
8 framework of a complaint, they must be supported by factual allegations. When there are
9 well-pleaded factual allegations, a court should assume their veracity and then determine
10 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,
11 679 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
13 elements: (1) that a right secured by the Constitution or laws of the United States was
14 violated, and (2) that the alleged deprivation was committed by a person acting under the
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **B. Legal Claims**

17 Plaintiff presents many allegations regarding his confinement in San Quentin State
18 Prison involving retaliation, delivery of his mail, confiscation of a book, gender
19 discrimination, and denial of access to the courts.

20 "Within the prison context, a viable claim of First Amendment retaliation entails five
21 basic elements: (1) An assertion that a state actor took some adverse action against an
22 inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled
23 the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably
24 advance a legitimate correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th
25 Cir. 2005) (footnote omitted). *Accord Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir. 1995)
26 (prisoner suing prison officials under § 1983 for retaliation must allege that he was
27 retaliated against for exercising his constitutional rights and that the retaliatory action did
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1 not advance legitimate penological goals, such as preserving institutional order and
2 discipline); *Barnett v. Centoni*, 31 F.3d 813, 816 (9th Cir. 1994) (per curiam) (same); *Rizzo*
3 *v. Dawson*, 778 F.2d 527, 532 (9th Cir. 1985) (contention that actions "arbitrary and
4 capricious" sufficient to allege retaliation).

5 Prisoners enjoy a First Amendment right to send and receive mail. See *Witherow v.*
6 *Paff*, 52 F.3d 264, 265 (9th Cir. 1995) (citing *Thornburgh v. Abbott*, 490 U.S. 401, 407
7 (1989)). A prison, however, may adopt regulations or practices which impinge on a
8 prisoner's First Amendment rights as long as the regulations are "reasonably related to
9 legitimate penological interests." See *Turner v. Safley*, 482 U.S. 78, 89 (1987). The *Turner*
10 standard applies to regulations and practices concerning all correspondence between
11 prisoners and to regulations concerning incoming mail received by prisoners from
12 non-prisoners. See *Thornburgh*, 490 U.S. at 413.

13 Prisoners also have a liberty interest in the receipt of mail, including subscription
14 publications, which triggers procedural due process guarantees. *Krug v. Lutz*, 329 F.3d
15 692, 696-967 (9th Cir. 2003). If prison officials withhold mail, a prisoner has a due process
16 right to receive notice that his incoming mail is being withheld. See *Frost v. Symington*,
17 197 F.3d 348, 353-54 (9th Cir. 1999); see also *Prison Legal News v. Cook*, 238 F.3d 1145,
18 1152-53 (9th Cir. 2001) (holding that due process rights apply to withheld mail where
19 prisoners had constitutionally protected right to receive the mail). A prisoner also has a due
20 process right to appeal the exclusion of mail to a prison official other than the one who
21 made the initial exclusion decision. See *Krug*, 329 F.3d at 697-98 & n.5.

22 The Ninth Circuit has found to be unconstitutional the prison policies limiting the
23 distribution of gift and solicited publications in several different cases in which it applied the
24 *Turner* test. *Hrdlicka v. Reniff*, 631 F.3d 1044, 1050 (9th Cir. 2011). In *Crofton v. Roe*, 170
25 F.3d 957, 961 (9th Cir. 1999), the court struck down a regulation that prohibited a prisoner
26 from receiving a book that had been ordered for his by his stepfather. *Hrdlicka*, 631 F.3d at
27 1050. An Oregon prison regulation that banned all bulk mail (also referred to as standard
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1 mail), as applied to subscription non-profit organization bulk mail, was struck down by the
2 Ninth Circuit because the regulation effectively barred access to core protected speech and
3 bore no rational relationship to legitimate penological interests. *See Prison Legal News v.*
4 *Cook*, 238 F.3d 1145, 1150 (9th Cir. 2001).

5 "The Equal Protection Clause of the Fourteenth Amendment commands that no
6 State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which
7 is essentially a direction that all persons similarly situated should be treated alike." *City of*
8 *Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe*, 457
9 U.S. 202, 216 (1982)); *Thornton v. City of St. Helens*, 425 F.3d 1158, 1168 (9th Cir. 2005)
10 (evidence of different treatment of unlike groups does not support an equal protection
11 claim).

12 Prisoners have a constitutional right of access to the courts. *See Lewis v. Casey*,
13 518 U.S. 343, 350 (1996); *Bounds v. Smith*, 430 U.S. 817, 821 (1977). To establish a
14 claim for any violation of the right of access to the courts, the prisoner must prove that there
15 was an inadequacy in the prison's legal access program that caused him an actual injury.
16 *See Lewis*, 518 U.S. at 350-55. To prove an actual injury, the prisoner must show that the
17 inadequacy in the prison's program hindered his efforts to pursue a non-frivolous claim
18 concerning his conviction or conditions of confinement. *See id.* at 354-55.

19 Plaintiff's complaint describes various issues that have arisen while confined at the
20 prison. He alleges that defendant Hilliard retaliated against him in February 2014 with
21 respect to a prison grievance. He states that defendants Muhammad, Lile, and Chappell
22 improperly confiscated a book in August 2013. He states that Muhammad, Lile, Chappell,
23 and Pasley have delivered his mail late or not delivered certain mail from October 2013 to
24 August 2014. He alleges that female prisoners are allowed to purchase different products
25 such as clothing, food, drinks, objects, and appliances, which he cannot purchase, in
26 violation of equal protection. He also argues that defendants Baxter and Davis denied him
27 access to the courts. While plaintiff provides specific details regarding some of the claims
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others only contain vague and conclusory allegations.

Federal Rule Civil Procedure 18(a) provides: "A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime as the party has against an opposing party." "Thus multiple claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2." *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). "Unrelated claims against different defendants belong in different suits[.]" *Id.*

It is true that Fed. R. Civ. P. 20(a) provides that "[p]ersons ...may be joined in one action as defendants if: (A) any right is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action." However, "[a] buckshot complaint that would be rejected if filed by a free person – say, a suit complaining that A defrauded the plaintiff, B defamed him, C punched him, D failed to pay a debt, and E infringed his copyright, all in different transactions – should be rejected if filed by a prisoner." *Id.* at 607.

In this action plaintiff has presented unrelated claims against many defendants. The complaint will be dismissed with leave to amend. Plaintiff should focus on a few related incidents and he must identify the specific actions of the defendants and describe how they violated his constitutional rights.

CONCLUSION

1. The complaint is **DISMISSED** with leave to amend in accordance with the standards set forth above. The amended complaint must be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.

1992). He may not incorporate material from the original complaint by reference. Failure to amend within the designated time will result in the dismissal of this action.

2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: July 14, 2015



NANDOR J. VADAS
United States Magistrate Judge